

04-10281
USDC/MA
Harrington, E.

MANDATE
United States Court of Appeals
For the First Circuit

No. 07-1230

ARY JEWELERS, LLC,
Plaintiff, Appellant,

v.

IBJTC WHITEHALL BANK & TRUST CO., ET AL.,
Defendants,

IBJTC BUSINESS CREDIT CORP.,
Defendant, Appellee.

Before

Boudin, Chief Judge,
Stahl, Senior Circuit Judge,
and Lynch, Circuit Judge.

JUDGMENT

Entered: November 28, 2007

We have reviewed the record and the parties' submissions, and we affirm. We see no abuse of discretion in the court's dismissal of this action for failure to prosecute, as appellant's refusal to go forward on the day of trial clearly was the type of "contumacious conduct" that justified sanctions. See John's Insulation, Inc. v. L. Addison & Assocs., Inc., 156 F.3d 101, 109 (1st Cir. 1998). If appellant did not wish to expend resources at trial after suffering adverse interlocutory rulings, the proper course of action was to seek a voluntary dismissal. See id. at 107. We do not review the correctness of those interlocutory rulings, as they are not properly before us. See id. at 105.

Affirmed. See 1st Cir. R. 27.0(c).

**Certified and Issued as Mandate
under Fed. R. App. P. 41.**

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 12/20/07

By the Court:

Richard Cushing Donovan, Clerk.

By: MARGARET CARLIS
Chief Deputy Clerk.

[cc: Lee S. Gayer, Esq., Robert S. Fischler, Esq., Christopher Dillon, Esq., Kate Cimini, Esq., Frank T. Buford, Esq., Barry L. Pickens, Esq., Ashish Mahendru, Esq., Stephen P. Carrigan, Esq.]